

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In re Applications of	)	MM DOCKET NO. 92-303
	)	
SKYLINE BROADCASTERS, INC.	)	File No. BPH-910925MD
	)	
TOM SEABASE	)	File No. BPH-910926MB
	)	
CLOUD NINE BROADCASTING, INC.	)	File No. BPH-910926MI
	)	
For Construction Permit for a New	)	
FM Station on Channel 292A in	)	
Kalispell, Montana	)	

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FEB - 8 1993

To: Administrative Law Judge  
John M. Frysiak

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**MASS MEDIA BUREAU'S COMMENTS IN SUPPORT OF  
JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT**

1. On January 12, 1993, Cloud Nine Broadcasting, Inc. ("CNB"), Tom Seabase ("Seabase"), and Skyline Broadcasters, Inc. ("SBI"), filed a Joint Request for Approval of Settlement Agreement. A supplement was filed on January 25, 1993, by Seabase, and a First Amendment to Settlement Agreement was filed on February 2, 1993, by the parties. The Mass Media Bureau submits the following comments.

2. The settlement agreement contemplates the dismissal of the applications of Seabase and SBI and the grant of the application of CNB. CNB would pay the legitimate and prudent expenses of Seabase and SBI in the respective amounts of \$25,000 and \$21,000. In addition, paragraph 7 of the settlement agreement, as amended, calls for the parties to forebear from opposing certain applications of other parties during the next seven years.

3. Review of the settlement agreement, as amended, and the

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attachments and supplements reveals that the applicants have filed the documentation required by Section 73.3525 of the Commission's Rules, which implements Section 311(c) of the Communications Act of 1934, as amended. Specifically, principals of the applicants have stated that the respective applications were not filed for an improper purpose and that grant of the joint request would conserve Commission resources and expedite the provision of a new FM service to Kalispell, Montana.

4. SBI has set forth an itemization demonstrating that its legitimate and prudent expenses incurred in this proceeding are \$21,000, excluding the hearing fee.<sup>1</sup> Accordingly, it is entitled to reimbursement of \$21,000 from CNB. Seabase has set forth an itemization demonstrating that his legitimate and prudent expenses incurred in this proceeding are \$23,996.45, excluding the hearing fee. Accordingly, he is entitled to reimbursement of no more than \$23,996.45 by CNB. Finally, the Bureau is satisfied that paragraph 7 of the settlement agreement, as amended, does not preclude the parties from bringing to the Commission's attention, in the future, information about whether the other parties lack basic qualifications to be a Commission licensee or are not operating a broadcast station in the public interest.


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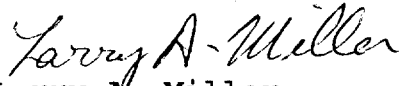
<sup>1</sup> Because the Joint Request for Approval of Settlement Agreement was filed in this proceeding by the notice of appearance deadline, SBI and Seabase would generally be entitled to a refund of their hearing fees. Of course, any fee refund request must be made to the Managing Director. Since the settlement agreement does not provide that either SBI or Seabase would return the hearing fee amount to CNB if their hearing fees were refunded by the managing director, the amount of their legitimate and prudent expenses should exclude the hearing fee.

See Nirvana Radio Broadcasting Corporation, 4 FCC Rcd 2778 (Rev. Bd. 1989).

5. In view of the foregoing, the Bureau supports grant of the Joint Request, approval of the settlement agreement and reimbursement in the amounts indicated, dismissal of the applications of Seabase and SBI, and grant of the application of CNB.

Respectfully submitted,  
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Chief, Mass Media Bureau

  
Charles E. Dziedzic  
Chief, Hearing Branch

  
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Federal Communications Commission  
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February 8, 1993

**CERTIFICATE OF SERVICE**

Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, certifies that she has on this 8th day of February, 1993, sent by regular United States mail, U.S. government frank, copies of the foregoing "Mass Media Bureau's Comments in Support of Joint Request for Approval of Settlement Agreement" to:

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